NO. 91-167

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In the Supreme Court of the United States

JULY TERM, 1991

B. L. PEREGOY, ET ALS,
PLAINTIFFS - APPELLANTS,

VS.

AMOCO PRODUCTION COMPANY
A Division of Standard Oil
Of Indiana, ET ALS,
DEFENDANT - APPELLEES.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the District Court and Appeals Court were in error in finding that Plaintiffs' suit was barred by state decisis, collateral estoppel and res judicata.

Whether the District Court and Appeals Court were in error in ordering sanctions against Plaintiffs and their counsel.

CERTIFICATE OF INTERESTED PERSON

Pursuant to Local Rule 28.2.1, the undersigned counsel of record for Plaintiffs - Appellants, certifies that the following listed persons have an interest in the outcome of this case.

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I

IN THE

SUPREME COURT OF THE UNITED STATES

B. L. PEREGOY, ET ALS,
PLAINTIFFS - APPELLANTS,

vs.

AMOCO PRODUCTION COMPANY
a Division of Standard Oil
Of Indiana, ET ALS,
DEFENDANTS - APPELLEES.

WRIT OF CERTIORARI

The Plaintiffs-appellants, by their respective counsel, Max E. Wilson, petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit, which affirmed the decision of the United states District Court for the Eastern Defendants' Motion for Summary Judgment.

OPINIONS BELOW

The Fifth Circuit Decision granting Defendants'-Appellees' Motion for summary Judgment is reported at 742 F. Supp. 372, (1991) and reprinted as Appendix A.

JURISDICTION

The Decision of the United States Court of Appeals for the Fifth Circuit is dated June 18, 1990.

STATEMENT OF THE CASE

On February 14, 1989, Plaintiffs filed their suit in the District Court for the Eastern District of Tennessee against the Defendant, except Defendant Chevron USA.

The suit alleges that Plaintiffs are heirs of Pelham Humphries, who was owner of a grant of land situated in Jefferson County, Texas. That their ancestor died interstate,

unmarried and without issue. That Defendants have extracted oil, gas and other minerals from the Pelham Humphries league of land. The suit seeks an accounting of all minerals extracted from the subject league and damages.

On may 18, 1989, the District Court in Tennessee ordered a transfer of the case to the District Court for the Eastern District of Texas. Plaintiffs promptly filed a Petition for Emergency Writ of Mandamus to the United States Sixth circuit Court of Appeals seeking to have the Court reverse the Order of Transfer. However, the Circuit Court of Appeals denied the Petition.

The Defendants filed Motions for Summary judgment and plaintiffs filed Motion to Amend and make Chevron USA a Party Defendant, as well as, Motion to retransfer the case to the District Court in Tennessee, and a Motion for Certification of a Class Action.

On December 6, 1989, the District Court held a hearing to consider the Motions.

Plaintiffs' Motion to Retransfer was denied; the Motion to Amend the Complaint was allowed and the Court took Plaintiffs' Motion for Certification of Class Action under advisement as it did Defendants' Motion for Summary Judgment.

On June 18, 1990, the District Court entered its Order and Memorandum Opinion stating there was no genuine issue of material fact and that this action is barred by res judicata, collateral estoppel, stare decisis and this Court's 1968 trilogy of Opinions contained in the decision of Humphries v. Texas Gulf Sulphur Co., 393 F. 2d 69 (5th Cir. 1968).

Defendants filed Motions for Sanctions and on August 9, 1990, the Court held another hearing, and subsequently entered an Order providing for sacntions of both Plaintiffs and their counsel.

Plaintiffs perfected their appeal and the United States Fifth Circuit Court of Appeals

affirmed the District Court's Order decision Plaintiff's case.

REASONS FOR GRANTING THE WRIT

The conclusion read by the District Court in granting Summary Judgment, affirmed by the Fifth Circuit, is in conflict with the stated opinion of this Court as well as of respected commentators on federal procedure.

It would be unfair, unconstitutional, and in violation of every established precedent to preclude Plaintiffs from maintaining the present action merely because other parties -- who were utter strangers, as far as Plaintiffs are concerned -- happened to bring an earlier lawsuit.

FIRST ISSUE: WHETHER THE DISTRICT COURT AND THE FIFTH CIRCUIT WAS IN ERROR IN FINDING THAT PLAINTIFFS' SUITS WERE BARRED BY STARE DECISIS, COLLATERAL ESTOPPEL AND RES JUDICATA.

STARE DECISIS:

There are two separate and distinct reasons why stare decisis does not apply here. First, the decision in Humphries v. Texas Gulf Sulphur co., 393 F. 2d 69 (5th Cir. 1968), rested upon an adjudication of fact rather than law; and the doctrine of stare decisis does not apply to adjudication of fact. Second, Plaintiffs should have been represented in the Humphries litigation but were not. Hence, it would be both unsafe and a denial of due process to deny Plaintiffs their day in Court because of the result in that litigation.

The Humphries decision adjudicated an issue of fact. Under the District Court's interpretation, the doctrine of res judicata and stare decisis are functionally equivalent. This interpretation is at odds with Federal Law:

> That persons similarly situated should be treated alike is an objective of stare decisis. But a theory under which a judgment in one case inexorably determines the judgment in another

> indistinguishable on its substantive facts would confuse the principle of stare decisis with those of res judicata.

IBJ Moore, J. Lucas and T. Currier, Moore's Federal Practice sec. 0.402(2) at 28 (2nd 1989) (footnote omitted); e.g. Migues v. Fibreboard Corp., 662 F.2d 1182, 1187-89 (5th cir., 1981) (the Fifth Circuit's decision upholding a finding that asbestos products were unreasonably dangerous was not stare decisis in subsequent asbestos litigation).

In Colby v. J.C. Penney Co., 811 F. 2d 119 (7th Cir. 1987) for example, a female employee of the J.C. Penney Company filed a Title VII action against Penney alleging that Penney's "head of household rule", whereby an employee could elect coverage for the employee's spouse if the spouse earned less than the Penney employees, discriminated against female employees. During the pendency of the plaintiff's action, the Equal Employment

Opportunity commission (EEOC) had lost in a parallel suit filed in Detroit also

challenging Penney's head of household rule on the very same grounds. Ruling that the EEOC decision was stare decisis in the Plaintiff's action, the District Court entered an Order of Dismissal, precisely as the Court has done in the case at bar. On appeal, though, the Seventh Circuit reversed:

> (T)he fact that the Detroit case involved the identical issue in a lawsuit brought against the identical defendant by a Plaintiff having the same interest as Mrs. Colby in a reason for the District Court in the present case to have given serious consideration to the Detroit decision -- but not a reason to invoke stare decisis and give the decision complete deference automatically, as the Court appears to have done. Id. at 1124.

The District Court concludes that stare decisis applies with special force to decisions involving land titles. In the abstract, this proposition is eminently sound. Whether it applies here, though, is another matter altogether. The cases relied upon by the District Judge involve rulings which construe the meaning of legal instruments, see, e.g., Pomeroy Oil Corp. v. Pure Oil Co.,

279 S.W. 2d 886 (Texas Cir. App -- Waco 1955, Writ ref'd; (prior construction of Deed); Mitchell v. Mitchell, 303 S.W. 2d 352, 354 (1957) (Construction of a Will); Pope v. Southhampton Civic Club, 539 S.W. 2d 165 (Tex. Civ. App. -- Houston (1st Dist.) 1976, No Writ) (Construing restrictive covenants).

Unlike the interpretation of legal instruments which is indisputably a ruling of law, the basis of the Humphries decision -- i.e., that the occupant's prolonged possession created the presumption of a grant, see 393 F. 2d at 72 -- is an adjudication of fact. Hence, as is illustrated by Swilley v. McCain, 374 S.W.2d 871 (Tex. 1964),doctrine of stare decisis is inapplicable.

United States v. Cocke, 399 F. 2d 433, 448 (5th Cir. 1968), Cert. denied, 394 U.S. 922 (1969). In particular, "the values of stability and judicial economy promoted by stare decisis must yield when reason and fairness so compel." American Indian

Agricultural Credit Consortium v. Standing Rock Sioux Tribe, 780 F. 2d 13374, 1378 (8th Cir. 1985).

In the case at bar, the District Court's attempt to use the Humphries case as stare decisis is unfair in the extreme. The Defendants, in the present case, could have invoked Fed. R. Civ. P. 19 in the Humphries case so as to ensure that all the heirs of Pelham Humphries, and solely the Plaintiffs in that actions -- who may not even have been true heirs of Pelham Humphries, insofar as the record discloses -- were joined in the action. The District Court has made much to do of the importance of stare decisis in actions where property rights are at issue. Be that as it may, the court overlooked one critical point. In actions seeking to adjudicate property rights, it is usual and customary to join as parties therein all persons claiming an interest in the property.

The Plaintiffs in Humphries did not seek to ensure that all the heirs of Pelham Humphries were represented in that action. Instead, they were in it for themselves -- a fact which casts grave doubt on the District Court's sanguine assurances that Plaintiffs herein were adequately represented in the Humphries case. Nor did the Defendants in the Humphries case seek to ensure, by means of Rule 19 or otherwise, that all the heirs of Pelham Humphries were represented. What the Defendants have done, in short, is to rely on precedent in which only a small fraction of the interested parties were represented.

Plaintiffs do not deny that court rulings adjudicating property rights are ordinarily entitled to strong stare decisis effect. But this is no ordinary situation. The respect which court rulings adjudicating property rights usually enjoy is due to the procedural safeguards that are utilized in such rulings to ensure that all potential claimants are

represented. Who ever heard of a quiet title action, for instance, where only a select few claimants were named as parties? Property rulings are usually entitled to strong stare decisis effect, in other words, because they usually are decided only after all potential claimants have been joined and afforded an opportunity to participate. That was not done in the Humphries case, either by the Plaintiffs therein or by the Defendants. It would be manifestly unjust, therefore, to permit the Defendants to take advantage of their own dereliction in failing to invoke Rule 19 by now citing the Humphries decision as binding precedent.

It would be more than unfair, moreover; it would be an unconstitutional denial of due process. "No interest which could be served by so rigid an adherence to stare decisis is superior to the demands of a system of justice based on a considered and consistent

application of the Constitution." Graves v. Schmidlapp, 315 U.S. 657, 665 (1942). The failure to join an indispensable party under Rule 19 has been equated with a jurisdictional defect:

> In diversity cases, the question of indispensable parties is inherent in the issue of federal jurisdiction, the determination of which should never await states a cause of action. Jurisdictional questions come first in the orderly disposition of a case. A precarious jurisdiction that limits the scope of judicial decision on the merits cannot be entertained.

Calcote v. Texas Pacific Coal & Oil Co., 157 F. 2d 216, 218 (5th Cir.), Cert. denied, 329 U.S. 782 (1946). Strictly speaking, the nonjoinder of a Rule 19 claimant is not a jurisdictional matter, Jim Walter Corp. v. FTC, 625 F. 2d 676 (5th Cir. 1980), but it is an omission of equivalent magnitude: "(A Rule 19) joinder must be made before a decision can be entered." Id. at 681 (emphasis added). This is so because of the due process implications of failing to join a Rule 19 party. And, just as a decision rendered

without subject-matter jurisdiction is not entitled to binding effect, so likewise a decision rendered without the joinder of indispensable parties is not entitled to binding effect. Thus, in his discussion of Rule 19, Professor Moore States as follows:

> A court cannot render a valid judgment binding upon a person over whom it has not obtained requisite jurisdiction -- in personam, quasi in rem, or i rem, as the case may be, unless that person is in privity with or is adequately represented by a party over whom the court has jurisdiction. To extend the judgment in violation of these principles and make it binding upon the person not before the court would constitute a denial of due process as to the absent party. Such a judgment is not, as to the absent party, entitled to full faith and credit.

3A J. Moore, J. Lucas & G. Grotheer, Moore's Federal Practice, 19.01-1(2) at 19-24 to 19-25 (2d ed. 1989) (emphasis added; footnotes omitted); accord Love v. Woerndell, supra; see also 18 C. Wright, A. Miller & E. Cooper, supra, 4457 at 500 n. 17 ("(t)he Court's well-founded doubt that due process

would permit issue preclusive should apply to the state decisis theory").

Regardless of whether one labels the applicable doctrine estoppel, fairness, justice, due process, or simply common sense, the facts herein compel the same conclusion. Having excluded Plaintiffs from representation in the Humphries litigation, the Defendants cannot now cite the results of the litigation as stare decisis in the case at bar.

COLLATERAL ESTOPPEL:

The District Court concluded that Plaintiff's suit is barred by collateral estoppel. Although differing in a number of respects, the doctrine of res judicata and collateral estoppel are alike one critical way: both require that the party against whom the doctrine is invoked have had a fair and full opportunity to litigate the issue in the prior proceeding. NAACP, Detorit Branch v.

Detroit Police Officers Association, 821 F. 2d 328, 330 (6th Cir. 1987). Plaintiffs did not have a full and fair opportunity to present their claims in the Humphries case. They were neither parties to that action, nor in privity with parties to that action. Accordingly, it would be unfair and a violation of Plaintiff's due process rights to apply collateral estoppel in the case at bar.

RES JUDICATA:

One indispensable requirement for res judicata is an identity of parties. That is, the parties to the present action must also have been parties to Humphries v. Texas Gulf Sulphur Co., supra, and its companion cases, or in privity with those parties. This requirement is not met in the case at bar.

On Page Four (4) of the Trial Court's Memorandum Opinion (Transcript of Court Record, Page 720), the Court in footnote (3)

states, "B.L. Peregoy, on of the Plaintiffs here, was a Plaintiff in Glover. The court i referring to the case of Glover v. McFaddin, 205 F. 2d 1 (5th Cir.), Cert. denied, 346 U.S. 900 (1953).

At the hearing on sanctions, Plaintiff, B.L. Peregoy testified that he was not a party Plaintiff in the Glover case. (Transcript of Hearing on Sanctions, Page 28).

There is no evidence that Plaintiffs were parties to any previous litigation. Defendants concede in their Briefs filed in the District Court that there is no indication in the Humphries opinion that Plaintiffs were parties thereto, but contend that "it is conceivable" that Plaintiffs were involved in the previous litigation. Proof is required, and there is none here.

Defendants also contend before the District Court that Plaintiffs in the case at bar are in privity with the Plaintiffs in Humphries or, in the alternatives, that

Plaintiffs are barred by the so-called "virtual representation" doctrine. Neither argument is correct.

The privity theory rests upon the assertion that Plaintiffs "are in a mutual and successive relationship" to the same rights of property that the Plaintiffs in Humphries sought to enforce. The key term here is "successive". Had Pelham Humphries himself been a party to the action relied upon this might be more accurate but he was not. The Plaintiffs in Humphries were descendants of Pelham Humphries. Plaintiffs in the present case are likewise here descendants of Pelham Humphries. But that does not make plaintiffs descendants of the Plaintiffs in Humphries. The Plaintiffs here are perhaps second cousin to those in Humphries, or perhaps uncles several times removed. While the plaintiffs in Humphries may be kin to those in the case at bar, there is nothing to indicate that they are lineal predecessors.

Plainly, then, Plaintiffs here do not stand in a success relationship to the Plaintiffs in Humphries, as is illustrated by Clark v. Amoco Production Co., 794 F. 2d 967 (5th Cir. 1986). That case, like the present one, involved a title claim to the Spindletop Oil Field. In 1982, James Clark and Dan Profitt brought individual actions, as heirs of the estate of James R. Meadors, claiming an interest in minerals extracted from Spindletop. After they lost, Clark and Profitt then instituted another action claiming an interest in Spindletop, but this time as administrators of Meador's estate on behalf of themselves and the other Meadors heirs. The District Court in the second action granted a Rule-12(b)(6) Motion, but this court reversed. One of the questions before this Court was whether the meadors heirs other than Clark and Profitt were successors to the latter parties' interest in the Meador's estate so as to be bound by the

earlier litigation. This Court held that they were not:

> The remaining Meadors heirs are not successors to Clark and Proffit's interest in the estate. The remaining heirs have concurrent interests in the property. 794 F. 2d 973.

In like fashion, Plaintiffs in the case at bar are not successors to the Plaintiffs in Humphries.

The District Court's conclusion that Plaintiffs are somehow bound by the doctrine of virtual representation is error. The virtual representation doctrine has its roots in probate proceedings, where the need to bind nonparties is compelling, and where specific protection for their interest is provided:

> The virtual representation phrase is drawn from probate proceedings, in which it is often necessary to establish a procedure that will bind persons unknown, ascertained, or not yet born. The need to bind nonparties in such circumstances is apparent. Protection is provided for the nonparties, moreover, by requiring representation by someone with clearly aligned interests.

Even aside from its misplaced reliance upon the virtual representation doctrine, the Trial Judge's suggestion that a similarity or identical interest between the Plaintiffs in Humphries and the Plaintiffs here should be a bar to the present action is incorrect for two reasons: First, mere similarity or identity of interest is not enough. For example, in Humphreys v. Tann, 487 F. 2d 666 (6th Cir. 1973), Cert. denied, 416 U.S. 956 (1974), several passengers in a TWA jet were injured when the plane collided with another aircraft owned by the Tann Company. One of the passengers brought suit against Tann, and lost. When another passenger later brought suit against it, Tann contend that the earlier passenger's unsuccessful action was a bar to the second passenger's action. Both passenger's interest of course were the same, i.e. to establish that Tann had been negligent. Nevertheless, the Sixth Circuit held that the District Court had been in error

in dismissing the second action on that ground:

> We share the concern of the District Court for the crowded dockets of Federal Courts and the proper utilization of judicial time. However, we do not believe that this consideration can over come the due process objection(.) 487 F. 2d 671.

The District Court's assumption that the Plaintiffs in Humphries had an interest identical to the to Plaintiffs here, merely because both groups of Plaintiffs are related, is unsound. Even close family relationships are not sufficient to establish privity with a party in a prior suit. Freeman v. Tester Coggins Trucking Co., Inc., 771 F. 2d 860, 863 (5th Cir., 1985). There is, to-be sure, an overlap of interest; but there are also adverse interests involved. It is hardly an unprecedented occurrence for someone seeking ownership of property to attempt to exclude family members who might otherwise be entitled to share in the claim. That, after all, is why guardians ad litem are appointed in

probate proceedings. And, even though the Plaintiffs in two different actions may have similar interests, the fact that their interest may diverge in other respects precludes the application of res judicata. Hadley v. Bacon, 828 F. 2d 1272, 1277 (8th Cir. 1987).

Res Judicata is, ultimately, a doctrine of fairness and hence should not be applied when it would result in manifest injustice to a party. United States v. La Fatch, 565 F. 2d 81, 83-84 (6th Cir. 1977), Cert. denied. 435 U.S. 971 (1978). It would be unjust indeed to deny Plaintiffs their day in Court while others have had an opportunity to litigate their claims to the Spindletop Oil Field, that fact does not justify dismission Plaintiffs' claims. No matter how often an issue has been litigated by others, prior adjudication cannot justify slamming the Courthouse door in the face of someone who was not a party of the prior actions. Such was precisely the Supreme

Court's admonition in Blonder - Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313 (1971), where the application of collateral estoppel was at issue:

> Some litigants - those who never appeared in a prior action - may not be collaterally stopped without litigating the issue. They have never had a chance to present their evidence and arguments on the claim. Due process prohibits stopping them despite one or more existing adjudication of the identical issue which stand squarely against their position, 402 U.S. at 329.

These same considerations apply to re judicata as well. Kremer v. Chemical Construction Corp., 456 U.S. 461, 480 - 81 N. 22 (1982).

SECOND ISSUE: WHETHER THE DISTRICT COURT WAS IN ERROR IN ORDERING SANCTIONS AGAINST PLAINTIFFS AND THEIR COUNSEL.

The sanctions ordered by the District Court were premised upon findings that the Plaintiffs' action was barred by stare decisis, collateral estoppel, res judicata and

this Court's 1968 decision in the trilogy of Humphries cases.

It is apparent from the review of this Court's decision in Thomas v. Capital Security, Inc., 836 F. 2d 88 (5th Cir. 1988) that sanctions are appropriate when a cause is dismissed by reason of res judicata. However, as Plaintiffs have stressed in their argument, supported by the authorities in answer to the first issue herein; they believe these reasons should preclude sanctions. For the sake of any reiteration, Plaintiffs simply rely on what they have previously stated regarding stare decisis, collateral estoppel, res judicata and the Humphries case.

CONCLUSION

For the reasons stated, Petitioners respectfully petition this Court to grant a Writ of Certiorari to review the decision of

the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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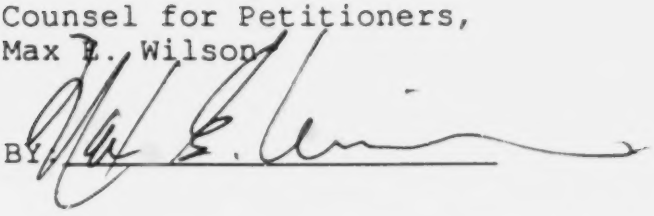
BY: 

CERTIFICATE OF SERVICE

The undersigned certifies that a true and perfect copy of the foregoing Petition for Writ of Certiorari has been served upon all counsel of record, by forwarding the same to them at their addresses in the U.S. Mail with proper postage thereon.

THIS the 22nd day of July, 1991.

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CIVIL ACTION B-89-00423-CA

B.L. PEREGOY, ROBERT H. CARR, DOUGLAS C. PEREGOY, BARBARA ANN PEREGOY §

VS. §

AMOCO PRODUCTION CO., a Division of Standard Oil of Indiana; MOBIL OIL CORPORATION; PHILLIPS PETROLEUM CO.; TEXACO INC.; CHEVRON, INC. §

MEMORANDUM OPINION

"(T)he Pelham Humphries litigation is over and the Humphries heirs have no title in the league of land . . . "

Judge Thornberry's holding in *Humphries v. Texas Gulf Sulphur Co.*, 393 F.2d 69 (5th Cir. 1968), has a hollow ring to the plaintiffs here who are seeking to exhume the Pelham Humphries dispute two decades after this definitive epitaph.

On February 14, 1835, Pelham Humphries received a land grant for one league of land in Southeast Texas from the Government of Coahuilla and Texas. He conveyed it in 1836 to William Inglish, who's children or heirs conveyed it to W.P.H. McFaddin in 1883. 393 F.2d at 70-71.

The Humphries litigation, spawned by the famed Spindletop oil field discovery, has long persisted in the face of numerous orders, decrees, and final judgements.[1]

This suit was filed in the United States District Court for the Eastern District of Tennessee on February 14, 1989. "Plaintiffs are the legal heirs of Pelham Humphries,

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[1] *Glover v. McFaddin*, 205 F.2d 1 (5th Cir.), cert. denied, 346 U.S. 900 (1953); *McBride v. Gulf Oil Corp.*, 292 S.W.2d 151 (Tex. Civ. App. - Beaumont 1955, writ ref'd n.r.e.); *Foster v. Gulf Oil Corp.*, 335 S.W.2d 845 (Tex. Civ. App. -- Beaumont 1960, writ ref'd n.r.e.); *Jones v. McFaddin*, 382 S.W.2d 277 (Tex. Civ. App. - Texarkana 1964, writ dism'd w.o.m.), appeal dism'd, 382 U.S. 15 (1965); *Green v. Texas Gulf Sulphur Co.*, 393 F.2d 67 (5th Cir.), cert. denied, 393 U.S. 977 (1968); *Beasley v. McFaddin*, 393 F.2d 68 (5th Cir.), cert. denied, 393 U.S. 842 (1968); *Humphries v. Texas Gulf Sulphur Co.*, 393 F.2d 69 (5th Cir. 1968). With the exception of *Forester*, each case resulted in summary judgment for defendants.

Deceased," (Complaint ¶ 3), and are seeking "an accounting for all minerals extracted from the league" which is asserted to be "in excess of Two Hundred Billion Dollars" from the defendants (Complaint, ¶ 5).

Judge Thomas Hull transferred the suit to the Eastern District of Texas on May 18, 1989. Plaintiffs sought a writ of manadamus from the Sixth Circuit to require Judge Hull to retain this Texas land case in East Tennessee. The mandamus was denied with a written opinion September 22, 1989. In *Re Peregoy*, 885 F.2d 349 (6th Cir. 1989).

The Sixth Circuit held:

> We also conclude that summary judgment would have been appropriate in this matter on the basis of res judicata or collateral estoppel. The Humphries heirs have had their day(s) in court, and then some.

Id. at 352.

All defendants have file motions for summary judgment under Rule 56(b), FED. R.

CIV. P.[2] The plaintiffs have filed a motion for class action certification under FED. R. CIV. P. 23.

The United States Court of Appeals for the Fifth Circuit has held that when appropriate, a district court can rule on motions for summary judgment before deciding whether to certify the case as a class action. *Floyd v. Bowen*, 833 F.2d 529, 534-35 (5th Cir. 1987). See also, *Marx v. Centran Corp.*, 747 F.2d 1536, 1552 (citing *Jacobs v. Grountsley*, 494 F.2d 513, 514 (5th Cir.), cert. denied, 419 U.S.868 (1974); *Miller v. Mackey International, Inc.*, 452 F.2d 424, 428-29 (5th Cir. 1971)).

Summary judgment is the appropriate method to dispose of this suit. *Celotex corp. v. Catrett*, 477 U.S. 317 (1986), therefore the court will not address the class action question.

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[2] Texaco Inc. has actually moved for dismissal under FED. R. CIV. P. 12(b)(6); the motion is hereby considered as a motion for summary judgment under FED. R. CIV. P. 56. See FED. R. CIV. P. 12(b)(6).

At least seven reproted cases have finally adjudicated claims of the heirs of Pelham Humphries, or claims arising out of the Humphries' claims. The plaintiffs were unsuccessful in every case. (See FN 1.)

In *Glover v. McFaddin*, 205 F.2d 1 (5th Cir.) cert. denied, 346 U.S. 900 (1953), the plaintiffs claimed title to the league of land through their ancestor Pelham Humphries, and his brother William and sister Betsie Janie Humphries. The united States District Court for the Eastern District of Texas granted summary judgment for the defendants. The Fifth Circuit affirmed.[3]

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[3] B.L. Peregoy, one of the plaintiffs here, was a plaintiff in *Glover*. Magnolia Petroleum Company, Gulf Oil Corporation, Gulf Refining Company, Stanolind Oil Purchasing Company, were defendants. Judgment at 2-8, *Glover v. McFaddin*, 205 F.2d 1 (5th Cir.), cert. denied, 346 U.S. 900(1953). The defendants in *Glover* named above were predecessors to Amoco, Mobil, and Chevron, defendants in the instant case (Affidavits Shannon, Oates, Jr. and Messer). Texaco was named party in *Green* and lawsuits (Affidavit of Cowart). The predecessor companies of Amoco, Mobil, and chevron were also parties to *Beasley* (judgment at 4); and *Green* (judgment at 3); Pan American Petroleum Corporation, a predecessor to Amoco, was a defendant in Humphries (judgment at 1) (Affidavits of Shannon, Oates, and Messer, *supra*).

This entire matter was decided by the Fifth Circuit in 1968 for the "final" time. All of the appellants in the *Humphries* case, and the appellants in the two companion cases,*Green, et al v. Texas Gulf Sulphur Co., et al*, 393 F.2d 69 (5th Cir.), cert. denied, 393 U.S. 977 (1968), and *Beasley, et al v. McFaddin, et al* 393 F.2d 68 (5th Cir.), cert. denied, 393 U.S. 842 (1968), claimed as heirs of Pelham Humphries. These cases have been referred to as the "trilogy" of the Humphries claims.

In each opinion, the Fifth Circuit held in favor of defendants:

> "The Pelham Humphries litigation is over and the Humphries heirs have no title in the league of land." *Humphries*, at 75.
>
> "All Humphries heirs, past, present, and future, are without title." *Beasley*, at 69.
>
> "All Humphries heirs are without title and this renders a remand unnecessary." *Green*, at 68.

The Fifth Circuit clearly indicated these three opinions were to be considered together:

> "Our reasoning in *Humphries* and *Beasley* confirms that all Humphries heirs are without title." *Green*, at 68.
>
> "(W)hat is said here is also dispositive of the *Beasley* and *Green* appeals." *Humphries*, at 71.

Texaco, therefore, was expressly affected by the companion case, *Humphries*.

The Fifth Circuit's trilogy makes it unnecessary for this court to compare the parties to this action with the parties to previous actions. Such comparisons underscore the futility of the present action. Although plaintiffs in this case now maintain the previous cases do not preclude them from pursuing the present claims "as the heirs of Pelham Humphries," This court believes that when the Court of Appeals said "all Humphries heirs," it mean <u>all</u> Humphries heirs, "past, present, and future."

There are three distinct grounds which, considered separately, support summary judgment for defendants. These are (1) *stare decisis*; (2) *collateral estoppel*; and (3) *res judicata*.

I.

Stare decisis gives force of law to precedent, and is broader than the doctrines of *res judicata* and *collateral estoppel*. *Stare decisis* does not require commonality or privity among the parties to the present or prior litigation. When a reviewing court issues a final ruling on a matter of law before it, "such determination is binding and conclusive in all subsequent suits involving the same subject matter, whether the parties and the property are the same or not." *Pomeroy Oil Corp. v. Pure Oil Corp* ., 279 S.W.2d 886, 888 (Tex. Civ. App. - Waco 1955, writ ref'd); *Sturgeon v. Strachan Shipping Co.*, 698 F.2d 798, 800 (5th Cir. 1983). Each of the seven Spindletop cases reported were final decisions concerning the claim for Pelham Humphries and his heirs to Spindletop.

Stare decisis is particularly applicable in cases involving claims of title to land because of the importance of establishing

stability of land sale, transactions and title. *Confederated Salish and Kootenai Tribes v. Namen*, 665 F.2d 951, 960 (9th Cir.), cert. denied, 459 U.S. 977 (1982).

The importance of *stare decisis* in land and title disputes was stated the Supreme Court of the United States in 1923. Justice Van Devanter, writing for the majority, declared:

> Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. . . Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change.

United States v. Title Ins. Co., 265 U.S. 472, 486-87, 44 S. Ct. 621, 68 L. Ed. 1110 (1923); (citing *Minnesota Co. V. National Co.*, 3 Wall. 332, 334 (1865).

Stare decisis applies in general to land cases, and it is even more germane when the ruling involves the claims of the same category of plaintiffs to the same land as in

this case. See, *Pomeroy Oil Corp. v. Pure Oil Co.*, 279 S.W.2d 886 (Tex.Civ. App. -- Waco 1955, writ ref'd); *Mitchell v. Mitchell*, 3303 S.W.2d 352, 354 (1957) (construction of a will); *Pope v. Southhampton Civic Club*, 539 S.W. 2d 165 (Tex Civ. App. -- Houston 1st Dist.] 1976, no writ) (construing restrictive covenants).

This court is bound by decisions of the Court of Appeals for the Fifth Circuit. There can be no stronger precedent than the Fifth Circuit's "trilogy" rejecting the claims of the Humphries heirs, and this court is bound by those holdings. What was true in 1968 is true today.

The plaintiffs in this suit make the same claims to the same property made in *Humphries v. Texas Gulf Sulphur Co.*, 393 F.2d 69 (5th Cir. 1968) - claims to the title to land, claims to minerals produced from the land, and, once again, claims by the plaintiffs that they are heirs of Pelham Humphries.

Therefore, summary judgment is GRANTED as to all defendants by reason of *stare decisis*.

II.

Collateral estoppel also requires the defendants' motions for summary judgment to be granted. The elements of collateral estoppel, or issue preclusion, are:

> (1) the issue at stake is identical to the one involved in the prior litigation;
>
> (2) the issue has been actually litigated in the prior litigation; and
>
> (3) that the determination of the issue in the prior litigation has been critical and necessary part of the judgment in that earlier action.

United States v. "Monkey," 725 F.2d 1007, 1010 (5th Cir. 1984); *Wehling v. Columbia Broadcasting system*, 721 F.2d 506, 508 (5th Cir. 1983).

The controlling issue in each prior suit by the Humphries heirs has been their claim to the land as heirs of Pelham Humphries. The prior decisions on this issue necessarily determines the other issues i the case. When

the tactical efforts of plaintiffs and their counsel are stripped away, the central issue is whether the plaintiffs as heir shave any claim to the land involved in this suit. If they do not, all other issues become moot. The trilogy cases make it clear plaintiffs, as heirs of Pelham Humphries, have absolutely no claim to the league of land in question. Further, as in this case, the determination of title to the land was the critical and necessary part of the judgments of earlier actions.

For collateral estoppel to apply, these plaintiffs must have been either parties or in privity with the parties to the prior lawsuits. See, *Hardy v. Johns-Manville Sales Corp.*, 681 F.2d 334, 338-39 (5th Cir.1982). The Fifth Circuit has held that parties are sufficiently close to be precluded form re-litigation when (a) they have succeeded to a party's property interest; (b) they controlled the prior litigation; or(c) their interests

were adequately represented by a party in the original suit. Id. at 339.

As the Fifth and Sixth Circuits have already determined, the heirs of Pelham Humphries have "had their day(s) in court, and then some." In *Re Peregoy*, 885 F.2d 349 (6th Cir. 1989). *Humphries v. Texas Gulf Sulphur Co.*, 393 F.2d 69 (5th Cir. 1968); accordingly, collateral estoppel supports summary judgment for all defendants, and their motions are therefore Granted.

Defendants Amoco, Mobil, Chevron, and Texaco also contend *res judicata* bars plaintiffs' suit.

Res Judicata, or claim preclusion, is available to most of the defendants in this case. Claim preclusion applies where

(1) there is an identity of parties between the two proceedings;

(2) both suits involved the same claims;

(3) the prior judgment was rendered by a court of competent jurisdiction; and

(4) the decision in the prior proceeding was a formal judgment on the merits.

Clark v. Amoco Production Co., 794 F.2d 967, 972 (5th Cir. 1986).

The first element regarding defendants Amoco and Mobil is satisfied; predecessor companies of these defendants were parties in *Glover, Green,* and *Beasley*. The predecessor of Amoco was also a defendant in *Humphries*.. (See affidavits of Oates and Shannon).

Chevron is the successor to Gulf Oil Corporation. Gulf was defendant in all of the prior suits except for *Humphries*. (See affidavit of Messer). Texaco, too, was a party to *Green* and *Beasley*, as noted *supra*.

The second element is present. There is clearly identity of interests between the present plaintiffs and those in prior Spindletop suits. In every case, it is only by establishing that Pelham Humphries died interstate while vested with title to the league of land where the Spindletop field is located that <u>any</u> Humphries heir could recover. No matter what arguments exist between the

factions of Humphries heirs, they all must prove that Pelham Humphries died while vested with title to the Humphries Survey. If plaintiffs fail on this point, no heir, no matter what the relationship to Pelham Humphries, can recover.

Plaintiffs cannot have a valid claim to the land if Pelham Humphries had o interest in it at his death. By claiming interest in the Humphries Survey by virtue of ancestral ties to Pelham Humphries, each and every plaintiff, past, present, and future, has an identical claim. In each of the prior cases the deciding courts had jurisdiction over the suit. The third element is satisfied.

The final requirement is that the prior decision be a formal judgment on the merits. Under *res judicata*, a summary judgment is an adjudication on the merits. *Underwood v. Hunter*, 604 F.2d 367, 369 (5th Cir. 1979). Six out of seven of the reported decisions resulted from summary judgment for the

defendants. The only defendant who cannot assert *res judicata* as a defense is Phillips Petroleum company, since neither it nor its predecessors have been parties in prior Pelham Humphries Spindletop litigation. All of the other defendants assert *res judicata* as an additional defense. Summary judgment is GRANTED as to Mobil, Chevron, Amoco, and Texaco.

Defendants Amoco, Mobil, and Phillips filed their original answers to plaintiffs' complaint on March 27, 1989, in the Eastern District of Tennessee. The answer asserted numerous affirmative defenses, some aimed at the merits of the action, some of a procedural nature. Among the defenses asserted are lack of subject matter jurisdiction; failure to state a claim upon which relief can be granted; the Texas two, three, four, five, ten, and twenty-five year statutes of limitations of the State of Texas;[4] the

[4] VERNON'S ANN. TEX. CIV. STATE. Art.5507; VERNON'S ANN. TEX. CIV. STAT.Art. 5509; VERNON'S ANN TEX. CIV.

doctrine of presumed grant or lost deed; and laches. Since summary judgment has been granted as to defendants under the doctrines of *res judicata*, collateral estoppel, and *stare decisis*, it is not necessary to consider the various defenses asserted on the merits of the suit.

This case is meritless. A simple and cursory examination of table of cases in the Federal Digest system would have revealed the result which this court has reached so predictably. It is indeed regrettable that the heirs of Pelham Humphries have needlessly caused to be expended the judicial resources of the United States Courts of Tennessee, Texas, the Court of Appeals for the Sixth Circuit, and the actual resources of the defendants. The eagerness of the plaintiffs and their lawyer to pursue this case in the light of numerous existing final decisions on the same issue may violate the provisions

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STAT. Art. 5510; VERNON'S ANN. TEX. CIV. STAT. Art. 5519.

which require the lawyer to make reasonable inquiry as to the basis of his cause of action prior to filing an action in a United States District Court. Rule 11, FED. R. CIV. P.

The defendants have filed motions for the imposition of sanctions under Rule 11, FED. R. CIV. P. A hearing will be set to act upon the motions. Counsel for all parties will be notified of the hearing, and may present all relevant matters for the court's consideration. The court may or may not request additional information from counsel or the parties.

Lest there be any further misunderstanding as to this court's ruling, take heed: there is no claim available to any heir of Pelham Humphries as to any part, parcel, or portion of the league of land commonly known as the Humphries Survey, nor the minerals extracted therefrom; nor is there any such claim by any heir of Pelham Humphries available to be asserted to that property or

minerals extracted from the league since 1901. "Any heir" of Pelham Humphries means <u>every heir</u>, past, present, or future. This court desperately desires that the ghost of Pelham Humphries will no longer haunt the halls of the United States court system.

"*[T]he Pelham Humphries litigation is over. . .* " Requiescat in pace.

SIGNED this_____ day of June, 1990.

_____

UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMON DIVISION

CIVIL ACTION B-289-00423-CA

B.L. PEREGOY, ROBERT H. CARR, DOUGLAS C. PEREGOY, BARBARA ANN PEREGOY §

VS. §

AMOCO PRODUCTION CO., a Division of Standard Oil of Indiana; MOBIL OIL CORPORATION; PHILLIPS PETROLEUM CO.; TEXACO INC.; CHEVRON, INC. §

FINAL SUMMARY JUDGMENT

On this day, came on to be considered the motions for summary filed yb the various defendants in the above entitled and numbered cause, and the court having reviewed the same, and having heard the argument of counsel thereon, is of the opinion that defendants various motions should be granted, as set forth in the memorandum opinion filed this date;

It is, accordingly, ORDERED that defendants' motions for summary judgment are hereby GRANTED, and plaintiffs' action is DISMISSED against all defendants herein.

Costs herein are taxed against the Plaintiffs.

SIGNED this ____ day of June, 1990.

_____

UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CIVIL ACTION B-89-0423-CA

B.L. PEREGOY, ET AL §

VS. §

AMOCO PRODUCTION CO., ET AL §

MEMORANDUM ORDER

All the defendants in this case have moved for the imposition of sanctions upon the plaintiffs and plaintiffs' counsel under FED. R. CIV. P. 11 (Rule 11).[1] This court has

[1] Rule 11. Signing of Pleadings, Motions and Other Papers; Sanctions. "Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other papers and state the party's address. Except when other wise specifically provided by rule or statue, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by cooborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading,

reviewed the motions and memoranda submitted, and heard oral argument upon the question.

The Fifth Circuit has provided this court with basic guidelines to follow in determining whether to impose sanctions under Rule 11. See *Thomas v. Capital Security Systems, Inc.*, 836 F.2d 866 (5th Cir. 1988). This court is to measure compliance with Rule 11 under an objective, not subjective, standard. *Thomas* at 873.

In the memorandum opinion dated June 18, 1990, which granted summary judgment to these defendants, this court discussed at length the

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motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for nay improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper including a reasonable attorney's fee." (emphasis supplied)

fact that this case is absolutely meritless. A simple and cursory review of cases directly on point with this case[2] would have so revealed. This court finds the plaintiffs' counsel in this case utterly failed to make a reasonable inquiry into either the facts of this case or the law applicable to this case. Such failure is clearly in violation of Rule 11. Counsel for plaintiff in effect admitted that sanctions were appropriate at the hearing on defendants' motion to impose sanctions.

Having found the plaintiffs' counsel violated Rule 11, this court must impose sanctions. *Thomas* at 876. Accordingly, this court imposes the following sanctions against the named plaintiffs and plaintiffs' counsel, Max Wilson:

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[2] *Green v. Texas Gulf Sulphur Co.*, 393 F.2d 67 (5th Cir.), cert. denied, 393 U.S. 977 (1968); *Beasley v. McFaddin*, 393 F.2d 68 (5th Cir.), cert. denied, 393 U.S. 842 (1968); *Glover v. McFaddin*, 205 F.2d 1 (5th Cir.), cert. denied, 346 U.S. 900 (1953); *Jones v. McFaddin*, 382 S.W. 2d 277 (Tex. Civ. App. -- Texarkana 1964, writ dism'd w.o.m.), appeal dism'd, 382 U.S. 15 (1965); *Foster v. Gulf Corp.*, 335 S.W.2d 845 (Tex. Civ. App. -- Beaumont 1960, writ ref'd n.r.e.).

1. Attorneys' fees and expenses payable to Locke, Purnell, Rain & Harrell in the amount of $83,938.66.

2. Attorneys' fees and expenses payable to Texaco Inc. in the amount of $30,708.32.

3. Attorneys' fees and expenses payable to Chevron, Inc., in the amount of $1,100.00

4. All taxable costs of court.

One half of this total is to be paid by the four named plaintiffs, to be borne by them equally; one half of this total is to be paid by Max Wilson individually.

Additionally, this court imposes the following:

1. The sanctions to be paid are to be paid by the plaintiffs and plaintiffs' counsel individually, and not from any litigation fund or money raised to pursue this case;

2. The sanctions to be paid are a penalty, and are not to be deducted by any of those sanctioned as an expense of doing

business on any state or federal income tax return;

3. That no check or other means of reimbursement, either directly or indirectly, shall issue from the litigation fund controlled by B.L. Peregoy to reimburse himself, his wife, any officer of his litigation association, or any attorney for any expense connected to these sanctions;

4. That at plaintiffs' and plaintiffs' counsel's expense, copies of this court's Memorandum Opinion dated June 18, 1990, and of this Memorandum Order shall be mailed to all present and former members of the litigation association;

5. That the Clerk of the Court for the Eastern District of Texas is enjoined from accepting for any lawsuit by any party claiming as an heir of Pelham Humphries and involving any claim to the land known as the Humphries Survey or the Spindletop Oil Field, unless there is first a motion for leave to

file granted by sitting judge in this District;

6. That copies of this memorandum order be forwarded at plaintiffs' and plaintiffs' counsel's expense, by the Clerk of the Court for the Eastern District of Texas to: The United States Treasury, Internal Revenue Service Division; and to counsel in Cause No. 5044, Chancery Court, First Judicial District, Jonesboro, Tennessee, and the Attorney General of Tennessee, Nashville, Tennessee.

This court finds these sanctions are necessary and appropriate to redress the blatant violation of Rule 11 which occurred in this case.

SIGNED this _____ day of October, 1990.

_____

UNITED STATES DISTRICT JUDGE

APPENDIX D

PEREGOY v. AMOCO PRODUCTION CO.

B.L. PEREGOY, et al.,
Plaintiffs- Appellants,

v.

AMOCO PRODUCTION COMPANY, et al., Defendants-Appellees.

Nos. 90-4535, 90-4834
Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

April 23, 1991.

Alleged heirs of original grantee of land brought suit against petroleum companies to obtain accounting for all minerals extracted from the land. The United States District Court for the Eastern District of Texas, Howell Cobb, J., 742 F.Supp. 372, dismissed suit on summary judgment, and heirs appealed. The Court of Appeals held that summary judgment was proper on basis of stare decisis.

Affirmed.

1. Courts 107

Cases decided on summary judgment based on Texas doctrine of presumed lost deed against other heirs who were, for all material fact purposes, in same position as plaintiffs, was stare decisis, and governed result in plaintiff's case.

2. Federal Civil Procedure 2786

District court did not abuse its discretion by imposing Rule 11 sanctions on plaintiffs who filed their suit even though they were aware of cases involving identical facts decided on summary judgment against similarly situated plaintiffs, and who, when faced with motion for summary judgement invoking those cases, did not even attempt to distinguish their case on any fact basis. Fed.Rules Civ.Proc.Rule 11, 28 U.S.C.A.

Appeals from the United States District Court for the Eastern District of Texas.

Before CLARK, Chief Judge, KING and GARWOOD, Circuit Judges.

PER CURIAM:

The plaintiffs in this case claim to be heirs of the original grantee of a tract of land known as the "Humphries survey" located in southeast Texas. They maintain that the defendants have been trespassing on their land and unlawfully taking their minerals. The district court granted summary judgment for all defendants. 742 F.Supp. 372. We affirm.

In a series of cases known as the "*Humphries* trilogy," this court held that "the absolute non-use of and non-claim to the land by appellants and their predecessors for more than 125 years, when measured against appellees' active use and claim, justify the imposition of a conclusive presumption that

all the Humphries heirs have lost their title." *Humphries v. Texas Gulf Sulphur Co.*, 393 F.2d 69, 72 (5th Cir. 1968); *see also id.* at 75; *Beasley v. McFaddin*, 393 F.2d 67, 68 (5th Cir.), *cert. denied*, 393 U.S. 977, 89 S.Ct. 445, 21 L.Ed.2d 438 (1968). Accordingly, we granted summary judgment for the defendants.

[1] The defendants in today's case maintain that the operative facts are identical to those in the *Humphries* trilogy. They indicate that the plaintiffs in today's case claim to be heirs of the same original grantee as the plaintiffs in the *Humphries* trilogy. They contend that neither the *Humphries* trilogy plaintiffs and their predecessors nor these plaintiffs and their predecessors used or claimed the land for more than a century, whereas the defendants in today's case and their predecessors actively used and claimed the land. Thus, the

defendants argue that summary judgment was proper on the basis of *stare decisis*.

Summary judgment is appropriate when there are no genuine issues of material fact so that the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). In the *Humphries* trilogy, we stated: "The Pelham Humphries litigation is over and the Humphries heirs have no title in the league of land." *Humphries*, 393 F.2d at 75. We concluded: "[A]ll Humphries heirs, past, present and future are without title." *Beasley*, 393 F.2d at 69. Because defendants' motion for summary judgment necessarily asserted that plaintiffs in the *Humphries* trilogy, it was incumbent on the plaintiffs to present summary judgment evidence which distinguished their fact situation in this case from the *Humphries* trilogy cases. They mad no attempt to do so.

Plaintiffs argue that *stare decisis* only applies to questions of law and that the *Humphries* trilogy decided questions of fact. Plaintiffs both mischaracterize the *Humphries* trilogy and miss the point of the summary judgment issue here. The *Humphries* cases were decided on summary judgment against other Humphries heirs who were, for all material fact purposes, i the same position as today's Humphries heirs. In fact, the record shows that at least some of these plaintiffs are lineal descendents of*Humphries* cases, we held that, on the facts presented, the defendants were entitled to judgment as a matter of law because of the Texas doctrine of presumed lost deed. The result must be the same in this case because all material summary judgment facts are identical. Summary judgment was correclty entered by the district court.

[2] The district court imposed Rule 11 sanctions on the plaintiffs. Abuse of discretion review applies. *See Cooter & Gell*

v. Harmarx Corp., - U.S.- , 110 S.Ct. 2447, 2461, 110 L.Ed.2d 359 (1990). The record shows that several plaintiffs have created a litigation fund solicited form numerous potential Humphries heirs. The purpose of this fund is attempt to establish claims to the Humphries survey through litigation. The plaintiffs and their counsel filed this action even though they were well aware of the *Humphries* trilogy. Then, when faced with a motion for summary judgment invoking those cases, the plaintiffs did not even attempt to distinguish their case on any fact basis. The district court did not abuse its discretion by imposing sanctions.

The decision of the district court is AFFIRMED.

FILED
AUG 29 1991
OFFICE OF THE CLER

CAUSE NO. 91-167

IN THE

SUPREME COURT OF THE UNITED STATES

JULY TERM, 1991

B. L. PEREGOY, ET AL
PLAINTIFFS - PETITIONERS,

VS.

AMOCO PRODUCTION COMPANY
A Division of Standard Oil
of Indiana, ET AL,
DEFENDANTS - RESPONDENTS.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TEXACO INC.'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Robert P. Thibault
1111 Bagby Street
Houston, Texas 77002
(713) 752-6024

Attorney of Record for
Respondent-Appellee

Of Counsel:

Brian S. West
1111 Bagby
Houston, Texas 77002

QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioners' claim against Texaco is barred by the doctrines of stare decisis, res judicata and collateral estoppel.

2. Whether the trial court acted within its discretionary powers in granting sanctions under F.R.C.P. Rule 11 against Petitioners and Petitioners' counsel for the filing of this lawsuit.

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Local Rule 28.2.1, the following are parties in the proceedings below in addition to those parties identified in the caption hereof:

FOR PETITIONERS - APPELLANTS

Mr. Max E. Wilson, P.C.
303 West Main Street
P.O. Box 906
Mountain City, Tennessee 37683

FOR RESPONDENTS - APPELLEES, AMOCO, MOBIL AND PHILLIPS:

Mr. Morris Harrell
Ms. Cynthia K. Timms
Locke, Purnell, Rain & Harrell
2400 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776

FOR RESPONDENT CHEVRON U.S.A.

Mr. Rick A. Mayer
P.O. Box 3725
Houston, Texas 77253-7375

FOR RESPONDENT PHILLIPS

Mr. Don Jemison
1299 Adams Building
4th & Keeler
Bartlesville, Oklahoma 74004

The following is a list of subsidiaries and/or affiliates of Texaco Inc. which have publicly-held debt or equity securities:

Texaco Capital Inc.
Texaco Capital N.V.
Texaco International Finance Corp.
Texaco Inc.
Texaco Mexicana S.A. de C.V.
Texaco Togo
Texaco Nigeria Limited
Texaco Ghana Limited
Refineria Texaco de Honduras S.A.

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b. The prior decision was rendered by the superior court and states the rule of law on the issue of ownership -- or lack thereof -- by Humphries heirs to be followed by all courts.

c. The Plaintiffs/Appellants are bound to the stare decisis effect of the prior ruling regardless of their participation in the earlier suit.

2. Res Judicata 17

a. This action is the same as the 1968 Humphries Trilogy.

b. The present parties were adequately represented in the 1968 Humphries Trilogy.

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B. THE TRIAL COURT ACTED WITHIN ITS DISCRETIONARY POWERS IN GRANTING SANCTIONS UNDER F.R.C.P. RULE 11 AGAINST PETITIONERS AND PETITIONERS' COUNSEL FOR THE FILING OF THIS LAWSUIT 33

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OPINION SOUGHT TO BE REVIEWED

The opinion of the Texas Court of Appeals that Petitioners seek to have reviewed was reported as B.L. Peregoy v. Amoco Production, et al, 929 F.2d 196 (5th Cir. 1991).

I. STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. sect. 1291.

II. STATEMENT OF ISSUES

1. Whether the Trial Court properly granted a summary judgment dismissing Appellants' claims on stare decisis, res judicata and collateral estoppel, or on any one of these theories.

2. Whether the trial court acted within its discretionary powers in granting sanctions under F.R.C.P. 11 against Petitioners and Petitioners' counsel for the filing of this lawsuit.

III. STATEMENT OF THE CASE

A. Course of proceedings and disposition in court below:

This suit was originally filed in the United States District Court for the Eastern

District of Tennessee, Northeastern Division, on February 14, 1989.

Upon motion of the Defendants, the case was transferred to the Eastern District of Texas, Beaumont Division, and on May 18, 1989, Plaintiffs filed a petition to seek a writ of mandamus against the Tennessee district court, asking the United States Court of Appeals for the Sixth Circuit to set aside the order of transfer.

With a written opinion, the Sixth Circuit denied the petitioner's request, allowing the case to remain with the Beaumont Court. See 885 F.2d 349 (6th Cir. 1989).

After conducting a hearing at which all parties were represented on December 6, 1989, the district court on June 18, 1990 issued an order with written opinion granting summary judgments to all Defendants that the doctrines of stare decisis, res judicata, and collateral estoppel barred the Plaintiffs from any further attempts to make claims on the

Spindletop league. See 742 F.Supp. 372 (E.D. Tex. 1990).

On October 24, 1990, the district court issued a written opinion ordering sanctions against the Plaintiffs pursuant to F.R.C.P. 11.

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the lower court. See 929 F.2d 196 (5th Cir. 1991).

B. Statement of facts:

Plaintiffs/Petitioners filed their suit in 1989 alleging that (1) Plaintiffs were the legal heirs of Pelham Humphries, (2) that Pelham Humphries was the grantee of a league of land located in Beaumont Texas (the Spindletop league), and in 1835 died while vested with title to the land, and (3) the Defendant oil companies extracted minerals rightfully belonging to the heirs of Humphries.

These claims were identical to the claims in a trilogy of cases decided over twenty years earlier by this very Court. Thus, in the present case, the Defendants filed motions to dismiss and motions for summary judgment that Plaintiffs' claims were barred by the doctrines of res judicata, stare decisis, and collateral estoppel.

In light of the history and circumstances of this litigation, summary judgments and Rule 11 sanctions were granted for Respondents and against Petitioners.

IV. SUMMARY OF ARGUMENT

It is hard to imagine a more fully litigated and decided rule of law than the central issue at the root of this present cause -- the issue of lack of ownership in the Spindletop Field by any heir of, or other claimant through, Pelham Humphries. Petitioners, who today again raise a $200 billion claim to the league of land giving

rise to the Spindletop gusher in 1901, have had their day in court, and then some, the most recent in 1968. After what can only be described as a full adjudication on the merits, the United States Court of Appeals for the Fifth Circuit -- in the strongest language, with no limitations whatever -- rejected the claims to these properties of any and all persons claiming through Pelham Humphries.

This 1968 trilogy of cases (two of which were denied certiorari by this Court) properly bars this present suit under each and every theory supporting the trial court's decision: stare decisis, res judicata and collateral estoppel. Petitioners' attack amounts to no more than a claim that this Court should not give full force and effect to its own, earlier rulings for two reasons: (1) because such decisions, involving the degree of fact determination always present in resolving title disputes, did not establish rules of law

for the property in question; and (2) that the Fifth Circuit did not, in fact, base those earlier decisions on full and adequate development of the merits. Such claims about the insufficiency of the Fifty Circuit's earlier opinions can only proceed from misreading beyond comprehension the controlling standards for decisions involving title to real property, and from outright denying that the Fifth Circuit understood the significance of the broad impact of its earlier language.

Given the circumstances and history of the claim presented in this suit, both well known to the Petitioners, the trial court had full discretion -- and properly exercised that discretion -- in ordering Rule 11 sanctions.

V. ARGUMENT

A. Petitioners' claim against Texaco is barred by the doctrines of stare decisis, res judicata and collateral estoppel.

In 1968, this very cause of action was decided by the Fifth Circuit for what it thought was the last time. In Humphries, et al v. Texas Gulf Sulphur, et al, 393 F.2d 69, 70 (5th Cir. 1968), the first of three companion cases, the court wrote that "[t]his diversity action proves that unlike old soldiers, expectant heirs never even fade away. It is one of a trilogy that hopefully will terminate the continuing battle between the heirs and the active users of the Humphries Survey." The court pointed out that all of the appellants in the Humphries case, as well as the appellants in the two companion cases, Green, et al v. Texas Gulf Sulphur Co., et al., 393 F.2d 67 (5th Cir. 1968) cert. denied 393 U.S. 977, and Beasley, et al. v. McFaddin, et al., 393 F.2d 68 (5th Cir. 1968) cert. denied 393 U.S. 842, claimed as heirs of

either "Pelham" or "William" Humphries. The court noted that while the appellees in that case and their predecessors had been in uninterrupted possession of the Spindletop Field since 1884 and had paid all the taxes, the appellants had done nothing to pursue any alleged claim to the tract:

> In stark contrast to this productive use is the absolute non-claim and inactivity by appellants for more than 125 years. Indeed, there is no evidence that appellants or their predecessors ever had possession of the land, paid any taxes, exercised any dominion over the land, or even asserted a claim to it. Nor is there any evidence to suggest that the conveyances presumed were not in fact made. All appellants have done is attempt to impeach all the known conveyances in order to prove that Pelham Humphries never parted with the land so that it descended to them. Humphries, supra at 73.

After this comment on the factual insufficiency of the evidence, the court stated sound policy reasons for its holding:

> Underpinning all these decisions is the salutary policy that courts should seek to quiet title to land...
>
> It is simply not rational to assume that more than 125 years would have passed without a claim being made to the land if

there were any substance to the claims...[This policy] also prevents time, which should heal the scars on title, from gradually undermining the title to land. Humphries, supra at 74.

Finally, the court held:

> [T]he failure of appellants and their predecessors to assert any claim to the land, to use it, or pay the taxes confirms that the original Humphries grantee, whether his name was Pelham or William, at some time in the past parted with title...The Pelham Humphries litigation is over and the Humphries heirs have no title in the league of land. Humphries, supra, at 75 [emphasis added].

Similarly, in Beasley, supra at 69, the Fifth Circuit held that "all the Humphries heirs, past, present and future, are without title." [emphasis added].

In Green, supra at 68, the court again held that "all Humphries heirs are without title and this renders a remand unnecessary." The subsequent Petition for Rehearing En Banc was denied.

Given these three holdings, each over twenty years old now (and referred to, for convenience's sake, as the "1968 Humphries Trilogy"), there can be no doubt that the

present action is a thing decided and failed to raise a claim in the trial Court because of the doctrines of stare decisis and res judicata, collateral estoppel.

1. **Stare Decisis.**

a. **This action is the same as the 1968 Humphries Trilogy.**

The issue presented in the instant case -- ownership from or through Humphries in the Spindletop league -- was squarely decided by the Fifth Circuit over twenty years ago, as evidenced by the above-quoted provisions. To reiterate the Fifth Circuit's holding, "the original Humphries grantee, whether his name was Pelham or William, at some time in the past parted with title." Humphries, supra at 75. There can be no doubt that Petitioners in the instant case are claiming through Pelham Humphries, as evidenced on Page 18 of the Petition, wherein they claim through Pelham Humphries. While Petitioners do not clearly allege or explain their theory as to how they

were harmed by the Respondents, Page 5 of the Petition alleges that Petitioners were owed a sum in excess of Two Hundred Billion ($200,000,000,000.00) Dollars due to their extraction of oil and minerals from the Spindletop Field.

Clearly, the issue of lack of ownership through Pelham (or William) Humphries was decided in the 1968 Humphries Trilogy. Both this present suit and the trilogy are based on the supposed continuing rights of Humphries' heirs to the subject league of land. This present suit and the Humphries' case, supra, involved the claim that the Humphries' heirs were entitled to profits derived from the minerals produced from the same properties. The claim to the land is the same; the land is the same; the alleged wrongful acts, whatever they are, must be the same; the case is the same. Therefore, whatever law of the case existed for the 1968 Humphries Trilogy, must also be the same for the present case.

b. **The prior decision was rendered by the superior court and states the rule of law on the issue of ownership -- or lack thereof -- by Humphries heirs to be followed by all courts.**

Putting aside their challenge on due process grounds, the Petitioners' attack upon the Trial Court's ruling essentially boils down to a single desperate claim: that the Court in the 1968 Humphries Trilogy was dealing with a title dispute and therefore, issued rulings purely of fact which are not to be given controlling effect as the rule of law. This attack ignores that judicial decisions interpreting title are always fact-laden; yet the central role of the doctrine of stare decisis has always been to uphold such title resolutions and keep them free of future litigation.

The United States Supreme Court has long recognized the strong public policy to be served by insulating judicial resolutions of title disputes from further reconsideration. See, United States v. Title Ins. Co., 265 U.S.

472, 486-87 (1924), where this Court held that "questions [affecting title to land], when once decided should be considered no longer doubtful or subject to change." See also Confederated Salish and Kootenai Tribes v. Namem, 665 F.2d 951, 960 (9th Cir.), cert. denied, 459 U.S. 977 (1982); Dunn v. Micco, 106 F. 2d 356, 359 (10th Cir.), cert. denied, 308 U.S. 620 (1939).

The decision in the Humphries Trilogy is of equal force and effect because it resolved the earlier dispute upon the Texas doctrine of presumed good title in the long standing-possessor. See Page v. Pan American Petroleum Corp., 381 S.W. 2d 949, (Tex. Civ. App.--Corpus Christi 1964, writ ref'd n.r.e.). The language the Humphries Trilogy can leave no doubt but that, the Fifty Circuit was announcing the firmest of conclusive presumptions, as a matter of law against any future challenges.

c. The Plaintiffs/Appellants are bound to the stare decisis effect of the prior ruling regardless of their participation in the earlier suit.

As pointed out by the Texas Court of Civil Appeals in Case-Pomeroy v. Pure Oil, 279 S.W.2d 886, 888 (Tex.Civ.App.--Waco, 1955 writ ref'd):

> The rule of stare decisis has reference only to questions of law; it involves no element of estoppel, and it operates upon all persons, and not merely the parties to the particular proceeding and their privies. Thus when the Supreme Court or a Court of Civil Appeals -- if the Supreme Court has denied an application for a writ of error -- has once given a definite effect to a specific writing or a particular fact situation -- as when it determines a true construction of a will or the validity of a deed...such determination is binding and conclusive in all subsequent suits involving the same subject matter, whether the parties and the property are the same or not. [Emphasis supplied].

In Case-Pomeroy, Plaintiffs were seeking royalties under a deed which had been construed as not passing a royalty interest in another case decided twenty years earlier by the Supreme Court of Texas. The Case-Pomeroy court held that even though the Plaintiffs in

that case were not the same Plaintiffs in the previous case, by doctrine of stare decisis they were nevertheless barred by the earlier decision from getting a different result. The court held that this was the case even if the Supreme Court had erred in its decision in the earlier case.

There can be no claim that the Fifth Circuit erred in its careful 1968 decisions concerning all Humphries heirs. There can be no legitimate claim that the Fifth Circuit ruled in such an unfair manner that deprived later claimants through Pelham Humphries of any due process rights. It cannot be that this Court can give, as the Appellants request, constitutional standing to Rule 19 joinder. The very standard quoted by Appellants cannot shield their claim from the effects of the earlier Humphries decisions: there is no showing whatever that unknown future claimants are Rule 19 parties.

In another case less than ninety years of recorded litigation associated with the Humphries heirs' attempts to recover the Humphries lands, the Petitioners' claims of denial of due process might ring with some sympathy. But not in this case; not with this history of endless litigation; not with the full, careful and yet forceful decision of the same issues in this case in 1968. The true benefits of due process must run to those who face the costs of such needless litigation. Freedom from constant attacks upon settled title matters must also rise to a protected position under due process considerations. The trial court and the appellate court below properly held that the earlier Humphries decision should be accorded full force as a controlling rule of law that bars all future claims through Pelham Humphries.

2. **Res Judicata.**

The doctrine of res judicata is a vibrant and significant rule of law to the U. S. Supreme Court:

> We have stressed that "[the] doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts...."

Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 401 (1981) (quoting Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294, 299 (1917)).

In Montana v. United States, 440 U.S. 147, 153 (1979), the Supreme Court described the doctrine of res judicata, along with the closely related doctrine of collateral estoppel:

> [A] "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction...cannot be disputed in a subsequent suit between the same parties or their privies..." [citations omitted]...Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action... [citations

> omitted]...Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation...[citations omitted]...Applications of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions.

Applying these doctrines to the allegations contained in the Petitioners' complaint filed in the immediate cause of action, it is apparent that Petitioners are barred from raising this already litigated claim, some twenty years after its ultimate resolution.

a. <u>This action is the same as the 1968 Humphries Trilogy</u>.

As fully set out in the preceding pages, there can be no argument that this present suit was the very same action as that ruled on and decided in the 1968 <u>Humphries</u> Trilogy. The claim to the land is the same; the land is the same; the alleged wrongful acts, whatever

they are, must be the same; the case is the same.

b. The present parties were adequately represented in the 1968 Humphries Trilogy.

There is also no doubt that the parties in the instant case were represented in the prior case.

Although the prior cases simply styled the Defendants as "Texas Gulf Sulphur, et al.", (in Green), and "McFaddin, et al.", (in Beasley), Texaco was a named party to both of these suits. The lower court and the Fifth Circuit have before them the Affidavit of Ms. Pauline S. Cowart, Assistant Secretary of Texaco Inc., attached as Exhibit "A" to Texaco's Motion to Dismiss, as proof that these parties were named in the previous Beasley and Green cases. By the court's own language, it is clear that the Fifth Circuit viewed all three cases in the 1968 Humphries Trilogy as being based on common theories and being inseparably interwoven. In Green,

common a link to Pelham Humphries. Although Pelham Humphries passed away over 120 years ago, the present suit is a perfect example that some still think they have a link to Mr. Humphries' estate. It militates against human conscience to think that each and every heir could bring a suit individually claiming Spindletop proceeds without ever having their claim barred by other Humphries heirs' suits. It also militates against the law.

Res judicata bars the claims of the Plaintiffs in this action because they were parties to the earlier suit in name, through outright privity with the named parties or by virtual representation. In the traditional sense, privity stands as a bar to these Plaintiffs who are in a mutual and successive relationship to the same rights of property that the Plaintiffs in the trilogy sought to enforce. W. D. Wilson v. Henwood 337 S.W.2d 194 (Tex. Civ. App. - Amarillo, 1960, writ ref. n.r.e). More significantly, under the

federal law of res judicata, a person may be bound by a judgment even though not a party if one of the parties to the suit is so closely aligned with his interests as to be his "virtual representative." Aerojet-General Corporation v. Askew, 511 F.2d 710, 719 (5th Cir.), cert. denied and appeal dismissed sub nom., Metropolitan Dade County v. Aerojet-General Corp., 423 U.S. 908 (1975); McArthur v. Scott, 113 U.S. 340, 5 Sup.Ct. 652, 28 L Ed. 1015 (1885). Federal res judicata rules apply in a diversity case in determining the effect of a prior federal judgment. Seven Elves, Inc. v. Eskenazi, 704 F.2d 241, 244 n.2 (5th Cir. 1983); Cleckner v. Republic Van & Storage Co., 556 F.2d 766, 769 n.4 (5th Cir. 1977). In Aerojet-General, supra, a county was found to have been virtually represented by a state agency in an action that was filed by a corporation against the agency. Id. Also a federal agency was found to have been virtually represented by a

state agency action. United States v. ITT Rayonier, Inc., 627 F.2d 996 (9th Cir 1980). See also, McCrocklin v. Fowler, 285 F.Supp. 41 (E.D.Wisc. 1968), aff'd, 411 F.2d 580 (7th Cir. 1969).

The U.S. Court of Appeals for the Sixth Circuit has long applied the U.S. Supreme Court's ruling that, under the doctrine of virtual representation, the legal actions of heirs or devisees bind other, similarly situated persons. Stewart v. O'Neal, 237 F. 897 (6th Cir. 1916). In Stewart, the Sixth Circuit held that rights of a remainderman under the will in question could be fully and finally litigated in a suit concluded forty years before he was born. 237 F. at 902:

> It is true that appellee was no party to the proceeding. But it was impossible to make him a party, as he did not come into existence until 40 years afterwards....He was, however, represented in the contest by the executors and other devisees and legatees made defendants to the proceeding, whose interest was identical with his;...The case comes clearly, therefore, within the principle of virtual representation, recognized by the Supreme Court in the case of McArthur v.

Scott, 113 U.S. 340, 5 Sup.Ct. 652, 28 L.Ed. 1015; and by this court in Pugh v. Frierson, 221 Fed. 513, 137 C.C.A. 223.

The significant requirement of the doctrine of virtual representation is that the representative must have a similar or identical interest to the unrepresented persons. Benner & Co. v. Atlas Remainder, Inc., 407 F.2d 219 (6th Cir. 1969). Texaco cannot understand Appellants' claim that there is no similarity or identity of interests between the Plaintiffs in the Humphries Trilogy and Appellants in the case at hand. Both sets of Plaintiffs are claiming under the same man, Pelham Humphries, and it is only by establishing that Pelham Humphries died while still vested with title to the Spindletop Field that any Humphries heir could recover. On this point, none of them would disagree. And it is on this very point which Texaco asserts the doctrine of res judicata.

Despite Appellants' contentions that "the virtual representation doctrine is of little

supra, the court expressly relied on its other opinions:

> "..our reasoning in Humphries and Beasley confirms that all Humphries heirs are without title..."

The holding in the 1968 Humphries Trilogy certainly runs in favors this Respondent, which was a party to two of these companion cases and, therefore, all of them.

Moreover, "the bringing in of additional party Defendants in the second suit that contributed to the same alleged wrong in the first suit, does not violate the requirement for identity of the parties in the application of the doctrine of res judicata." Rosenthal v. Nevada, 514 F.Supp. 907, 912 (D.Nev. 1981). Therefore, "it is no objection that the former action included parties not joined in the present action, or vice versa, so long as the judgment was rendered on the merits, the cause of action was the same and the party against whom the doctrine is asserted was a party to the former litigation." Dreyfus v. First

National Bank of Chicago, 424 F.2d 1171, 1175 (7th Cir.) cert. denied, 400 U.S. 832 (1970). Clearly, then, Petitioners cannot hope that the adding and dropping of party Defendants since 1968 will rejuvenate their case.

Likewise, there can be no doubt that Petitioners were present in fact or as a matter of law in the previous cases. Although the Plaintiffs were simply styled in the earlier cases as "Humphries, et al.", "Beasley, et al.", and "Green, et al.", and there is no listing in the opinion of all of the other Plaintiffs in the suit, it is conceivable that the present named Petitioners were named parties in the trilogy. However, the actuality of such an occurrence is unimportant in light of the Fifth Circuit's holding in each of the trilogy opinions and all of them together. The Fifth Circuit held, as the cornerstone of its related opinions quoted above, that all heirs claiming through the Humphries estate of necessity have in

value", the doctrine is very much alive and well when correctly applied to the proper fact situation. In Klugh v. U.S., 818 F.2d 294, 300 (4th Cir. 1987), the court noted that "[t]he doctrine of virtual representation is recognized by federal and state law alike in this case." While the court pointed out that the doctrine must "cautiously be applied" in order to avoid infringement of the process, the doctrine could be applied where the Plaintiffs in that case and the Appellants in the instant are "so closely aligned in interest as to justify precluding litigation of the Plaintiffs' claim." Id.

In Jaffree v. Wallace, 837 F.2d 1461, 1467 (11th Cir. 1988), the court en route to affirming a lower court's dismissal of a Plaintiff's suit on the theory of res judicata, said "[w]e begin with a discussion of the doctrine of 'virtual representation', which supports a finding of privity 'when the respective interests are closely aligned and

the party to the prior litigation adequately represented those interests.'"

In Robinson v. National Cash Register Co., 808 F.2d 1119, 1124 (5th Cir. 1987), the court held that:

> A person may be bound by a judgment even though not a party if one of the parties to the suit is so closely aligned with his interest as to be his "virtual representative"... The question whether a party's interest are virtually representative of the interests of a non-party is one of fact for the court.

When the above cases, each one decided within the last four years, are applied to the facts of this case, it is clear that this Court has the authority to decide that Appellants were virtually represented in the Humphries Trilogy. Virtual representation is not a dead concept, but is very much alive and available for application to the proper fact situation. Such a situation is currently before this court.

Petitioners place great reliance on the Clark case to support their position that they

were not adequately (represented in the 1968 Humphries Trilogy. This is a misinterpretation of the holding in that case.

In Clark v. Amoco Production Company, 794 F.2d 967 (5th Cir. 1986), the court held, as Appellants have pointed out, that "Meadors' heirs are not successors to Clark and Profitt's interest in the estate." However, direct lineal succession to an interest in an estate is only one of three ways in which a non-party can be bound by a prior judgment of which he was not a party. As the Fifth Circuit pointed out in Clark, a non-party to litigation may be bound in three situations:

> (1) Where a non-party succeeds to a party's interest in property bound by prior judgment; (2) where the non-party controlled the previous litigation; or (3) where the non-party's interests were represented adequately in the original suit. 794 F.2d, at 973. [Emphasis added.]

Petitioners' focus on the fact that the Meadors heirs were not successors to Clark and Profitt's interests is answer only to the first of the three tests. However, the

crucial test underlying the Clark opinion is part (3): whether the non-party's "interests were represented adequately" in the original suit. In Clark, the court held that the Meadors heirs would not be bound by the prior judgment because under the facts of that case, the litigants were not adequately represented in the previous suit:

> [W]e cannot hold that these non-parties were adequately represented by two parties who proceeded pro se and failed to appeal the dismissal of their case. [Emphasis added.]

In contrast to Clark, the prior litigants in the Humphries Trilogy more than adequately represented the interests of all Humphries heirs, past, present and future. The parties to all three cases were represented by numerous counsel and did not proceed pro se. Furthermore, the Humphries Trilogy were appellate decisions. A careful reading of each decision reveals that the Fifth Circuit had before it a full record, fully examined the theories under which the various

Plaintiffs in those cases claimed, and carefully considered and deliberated over each claim. Finally, those Plaintiffs applied for, and were denied, a writ of certiorari to the Supreme Court of the United States. [See 393 U.S. 842 (1968) and 393 U.S. 977 (1968)] Now, 20 years after these three decisions were handed down, we can rely upon the Fifth Circuit, which actually reviewed a full record, heard the arguments of the parties and read the briefs written in the case; and, we can conclude the Fifth Circuit was so satisfied that the Humphries heirs were adequately represented, that the Court felt justified in holding that "all the Humphries heirs, past, present and future are without title." Beasley v. McFaddin, 393 F.2d 68 (5th Cir. 1968). [Emphasis added.]

In summary, each of the Humphries heirs clearly possess the same identity of interests as those who appeared in the earlier Spindletop suits: they are all claimants

through the same man, and can take only what Pelham Humphries himself would have had immediately prior to his death, which the Fifth Circuit has held to be nothing, since Humphries "parted with title" sometime during his life.

All Humphries heirs are without title -- this present action is a thing decided.

3. **Collateral Estoppel**.

Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits, even when those subsequent suits are based on a different cause of action involving a party to the prior litigation. See Montana v. United States, supra. If nothing else, certainly the central issues of (1) whether Pelham Humphries died without title to the land, and (2) whether the Fifth Circuit in 1968 clearly laid to rest the question of

title to the Spindletop league of land, have been decided. No challenge could possibly be made to either the competence or jurisdiction of the District Court for the Eastern District of Texas or the Fifth Circuit.

For all the reasons set out above, the determination of these central issues were made against the present Petitioners and their virtual representatives.

It is somewhat theoretical to distinguish between the doctrines of res judicata and collateral estoppel given the seamless unity between the present action and the 1968 Humphries Trilogy. Nonetheless, if for some reason it can be said that this present suit is not a thing already decided in 1968, then surely Petitioners are collaterally estopped from avoiding the Fifth Circuit's 1968 specific pronouncements that (1) their only source of title, Pelham Humphries, parted with title before his death, and (2) all heirs,

past, present and future, are concomitantly without title.

B. The trial court acted within its discretionary powers in granting sanctions under F.R.C.P. Rule 11 against Appellants and Appellants' counsel for the filing of this lawsuit.

Petitioners do not challenge the severity of the sanctions orders, but argue only that no sanction at all is warranted in this case. In fact, Petitioners concede that sanctions are warranted where res judicata bars a suit which is nevertheless filed. Given the arguments above, the conclusion is irrefutable that if ever there was a case for Rule 11 sanctions for the filing of a frivolous suit, the present case on appeal is the prime example.

VI. CONCLUSION

The trial court properly held - and the Court of Appeals properly affirmed - that the

1968 Humphries Trilogy fully laid to rest any claims by any heir of Pelham Humphries. Each of the legal doctrines of closure upon which the trial court based its decision is fully applicable to the instant case and fully bars it. The trial court was correct in granting - and the Fifth Circuit correct in affirming - summary judgment dismissing this suit. There are no reasons for this Court to re-open a case which has been re-opened and decided too many times already.

Likewise, there can be no question that Rule 11 sanctions were properly ordered in furtherance of respect for the 1968 Humphries Trilogy's earlier attempt to rid courts of this useless litigation.

Respectfully
submitted,

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CERTIFICATE OF SERVICE

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